



U.S. Department  
of Transportation

**FEDERAL AVIATION  
ADMINISTRATION**  
Office of Aviation Policy and Plans  
Washington, D.C. 20591

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**DRAFT REGULATORY EVALUATION,  
INITIAL REGULATORY FLEXIBILITY DETERMINATION,  
INTERNATIONAL TRADE IMPACT ASSESSMENT, AND  
UNFUNDED MANDATES ASSESSMENT**

**NOTICE OF PROPOSED RULEMAKING**

**PASSENGER FACILITY CHARGE PROGRAM  
(14 CFR PART 158)  
AMENDMENT PURSUANT TO  
PUBLIC LAW 108-176**

**OFFICE OF AVIATION POLICY AND PLANS  
OPERATIONS REGULATORY ANALYSIS BRANCH, APO-310**

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## EXECUTIVE SUMMARY

### **Total Costs and Benefits of this rulemaking**

The estimated net cost saving of this proposed rule is estimated at \$3,550,000 or \$2,544,850, discounted. Although the pilot program would terminate after 3 years, the other proposed provisions would continue. Airports are estimated to have net cost savings over a 10-year period of \$3,075,000 or \$2,211,250, discounted. The FAA is estimated to have net cost savings of \$475,000 over a 10-year period or \$333,600, discounted. Air carriers would incur only minimal costs in adjusting to the proposed changes to part 158

### **Who is Potentially Affected by this Rulemaking**

Commercial airports, air carriers serving these airports and the traveling public using these airports.

### **Our Cost Assumptions and Sources of Information**

Discount rate – 7%

Period of analysis – 2005-2007 for savings associated with the pilot program and 2005-2014 for proposed regulatory changes

Monetary values expressed in 2003 dollars

#### Costs (per individual action):

Airport cost to notify and consult with an air carrier regarding a PFC application	\$175
Airport cost to solicit and include public comment on PFC application	\$600
Airport cost (non-hub airports) to file a PFC application	\$5,000
Airport cost-savings for PFC use application	\$5,000
Airport cost-savings for PFC amendment	\$1,667
FAA cost of Federal Register notice	\$500

These cost figures are based on the results of a study conducted by the FAA, the FAA's experience with the administration of the PFC program, and as part of figures determined for paperwork reduction analysis.

### **Alternatives We Considered**

The FAA hired a consultant to review past PFC records of decisions and other related materials to assess whether certain PFC procedures could be streamlined. On the basis of the study, the FAA put forward several ideas for streamlining the PFC process as part of the Administration's Reauthorization proposal. Many of these proposals were incorporated into the Vision 100 law.

### **Benefits of this Rulemaking**

The FAA estimates that the net effect of the proposed changes would be a decrease in cost for airports and has a neutral effect on air carriers and airline passengers.

### **Cost of this rulemaking**

Airports would realize net cost savings over a 10-year period of \$3,075,000 or \$2,211,300, discounted.

### **Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the

determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would not impose costs on small commercial service airports. Rather, costs associated with this proposed rule would be limited to only what is authorized by statute. Moreover, actual PFC collection authority is not affected by the proposal and all costs are fully recoverable through the PFC, if necessary, by small adjustments in the period of PFC collection. The FAA estimates that a small airport would realize net cost-savings of approximately \$9,400 annually under the proposed rule.

The FAA conducted the required review of this proposed rule and determined that it would not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

### **International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not

considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards

In accordance with the above statute, the FAA has assessed the potential affect of this proposed rule and has determined that, to the extent it imposes any costs affecting international entities, it would impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

### **Unfunded Mandates Reform Act Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

## **I. INTRODUCTION**

This regulatory evaluation investigates the economic impact of a proposed rule amending part 158 of Title 14 of the Code of Federal Regulations, Passenger Facility Charges. The proposed rule was initiated in response to Vision 100 which provides for changes to part 158 that simplify and streamline the passenger facility charge (PFC) process for public agencies and air carriers. This proposed rule would specifically amend several sections of part 158.

In addition to the economic analysis, this regulatory evaluation contains an initial regulatory flexibility determination, which analyzes the economic impact of the proposed regulatory changes on small entities, as required by the Regulatory Flexibility Act of 1980, as amended. This evaluation also contains an assessment of the effect of the proposed regulatory changes on international trade, as required by the Trade Agreement Act of 1979. Finally, this document contains an Unfunded Mandate Assessment, as required by the Unfunded Mandates Reform Act of 1995.

## **II. BACKGROUND**

On November 5, 1990, Congress enacted the Aviation Safety and Capacity Expansion Act of 1990 (Pub.L. 101-508) that authorized public agencies to impose a PFC of \$1, \$2, or \$3 per enplaned passenger at a commercial service airport it controls. For each passenger round trip, a PFC is only collected at the first two airports and the last two enplaning airports where PFCs are imposed, thus bringing the maximum charge under the 1990 Act to \$12. The statute set forth several broad objectives for the use of these funds in furthering airport development including preserving or enhancing airports' safety, security, or capacity; reducing noise; or enhancing airline competition. The statute authorized the use of the funds for a broad array of development projects and gave airports more flexibility in the use of these funds than allowed by Airport Improvement Program (AIP) grants. The statute directed the Secretary of Transportation to establish the PFC program through regulation, including procedures to require an air carrier or foreign air carrier and its agents to collect a PFC imposed by an airport public agency.

These procedures established the process by which a public agency would apply for a PFC and by which the FAA would evaluate such applications.

On May 29, 1991, FAA issued a final rule (56 FR 24254) setting forth procedures for public agency applications for authority to impose PFCs, for FAA processing of such applications, for collection, handling, and remittance of PFCs by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing AIP grants apportioned to large and medium hub airports imposing a PFC. Minor technical amendments and corrections (56 FR 30867 and 56 FR 37127) were made in the summer of 1991. This rule established part 158, Passenger Facility Charges.

On April 5, 2000, the “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” (AIR-21, Pub.L. 106-181) was signed into law, making several modifications to the PFC program, including allowing a public agency to apply to the FAA to increase the PFC level that it may charge from the previous cap of \$3 to \$4 or \$4.50. On May 30, 2000, the FAA issued a final rule to amend part 158 to incorporate the administrative and statutory changes specified in AIR-21 and other recent enactments by Congress. The revised part 158 became effective on June 29, 2000.

In light of the issues encountered during the rulemaking process for AIR-21, and with a 10-year history for the PFC program, the FAA concluded that there were components of the PFC process that should be considered for streamlining. The FAA hired a consultant to review past PFC records of decisions and other related materials to assess whether certain PFC procedures could be streamlined. On the basis of the study, the FAA put forward several ideas for streamlining the PFC process as part of the Administration’s 2003 Reauthorization proposal. Many of these proposals were incorporated into the Reauthorization legislation, now called Vision 100, and passed into law.



### *Current Developments*

On December 12, 2003, President Bush signed Vision 100 (Pub.L.108-176) into law.

This legislation mandated that the FAA take certain actions to streamline the PFC process as well as other actions. Specifically, the legislation directed the FAA to:

- modify PFC application requirements to limit notice and consultation only to such carriers that have a significant business interest at the airport;
- add a public comment process to the PFC application requirements;
- make the publication of a Federal Register notice optional, rather than mandatory;
- and develop a pilot program to test alternative procedures for authorizing non-hub airports to impose a PFC. The pilot program terminates 3 years after the effective date of the final rule.

The legislation also included other changes to the PFC program which will be addressed in a future rulemaking action. In addition to the items specifically mandated in Vision 100, the FAA has included additional items related to implementation of the non-hub pilot program that did not require legislation to facilitate their inclusion in this rulemaking. These items are as follows:

- modify the PFC application process to streamline the use application process by eliminating redundant information;
- simplify the PFC application by eliminating stand-alone certifications attesting to compliance with various provisions of the PFC regulation;
- and revise the PFC amendment process to increase flexibility and remove complexity by replacing the existing three amendment processes with two processes.

The FAA believes that, when taken in aggregate, the proposed changes to part 158 will provide some cost-savings to public agencies. The changes primarily simplify or eliminate existing requirements. In those cases where new procedures replace old ones, the new procedures are less burdensome on the stakeholders.

### **III. Analysis of Costs**

Most of the proposed changes to the PFC process are mandated by statute through Vision 100 and are not subject to the FAA's discretion. Changes proposed in addition to those prescribed by statute complement the statutory changes. However, the reasonableness of the costs for these changes is subject to FAA review and public comment in the proposed rule. In addition, the methods for implementing the rule changes are subject to the FAA's discretion and public comment. Since Vision 100 provided for the sunset of the pilot program after 3 years the costs and cost savings related to the program terminate after 2007 but continue for the other statutory and regulatory changes.

#### **A. Costs to Airports**

##### Statutory Requirements

The principal effect of the proposed rule changes is to streamline and simplify the PFC application and approval process for public agencies. The FAA is proposing changes to part 158 that are expected to be either cost-neutral or offer cost savings to public agencies.

The proposal to amend section 158.23 to limit notice and consultation to air carriers with a substantial business interest at the airport would allow public agencies to reduce the number of notices sent to carriers resulting in a cost savings. The amount of this savings is difficult to quantify. Currently, public agencies notify and consult with all carriers serving the airport. To determine the carriers serving the airport, the public agencies and the FAA rely on the Air Carrier Activity Information System (ACAIS) database summary for the most current year available. Several of the carriers on the ACAIS list may have operated at the airport once or twice and, given the data compilation lag of up to nine months, may not have served the airport in some time. The effect of limiting notice and consultation to air carriers with a significant business interest would for most airports, as a minimum, exclude at least one and as many as 10 or more carriers from notice and consultation. For each of the 100 PFC applications that the FAA receives annually, this rulemaking change would exclude five air carriers from being notified. The FAA estimates that the cost of notifying and consulting with an air carrier to be approximately

\$100 to \$250 per application or an average cost of \$175. Therefore, for an average of 5 carriers excluded from notification, the cost-savings would be \$875 per airport. This would enable public agencies to lower the administrative costs of the 100 PFC applications submitted annually by a total of \$875,000 or \$614,500, discounted, over a 10-year period.

The proposal in section 158.24 to include a public comment process as part of the PFC application is expected to add slightly to the cost of developing a PFC application. While public comments were scarce previously, the inclusion of this procedure in the application process may encourage more comment. Thus, the FAA estimated that an average of 2 comments would be received for each of the 100 annual applications, based on its study of past submittals done in support of reauthorization legislation. The FAA estimates the additional cost to a public agency to be approximately \$600 dollars to solicit and include public comment for each PFC application. The notice to the public can be solicited in one of four ways: local newspaper, other local media, the public agency's website or some other method acceptable to the FAA, thereby offering a public agency minimal cost options. Accordingly, the additional costs associated with this process are expected to be \$60,000 annually. The total cost over a 10-year period would be \$600,000 or \$421,400, discounted. Also, the public comment process replaces the current Federal Register process which costs were borne by the FAA.

The pilot program proposed in section 158.30 is expected to generate the greatest savings for public agencies with non-hub airports that apply to collect and use PFC revenue. The proposed process greatly reduces the required documentation to be submitted to the FAA. In addition, for those projects at non-hub airports that are for the matching local share of Airport Improvement Program (AIP) grants, the public agency has the added benefit of relying on its AIP grant application as documentation for its PFC application. Another cost savings for pilot program participants is a much more rapid turnaround by the FAA in issuing a determination on the application. The pilot program establishes a 30-day deadline, whereas most decisions issued previously for non-hub airports took from 75 to 90 days, with some approaching the statutory deadline of 120 days.

The FAA expects that the pilot program would reduce the application costs for a non-hub airport by approximately 50 percent. The FAA has estimated that for non-hub airports, the cost to develop and file a PFC application is approximately \$5,000. Based on past submittals, the FAA has determined that this would effect 40 applications annually. Accordingly, the annual cost reduction associated with this process is expected to be \$100,000 nationwide. The 3-year cost savings of this proposed change would be \$300,000 or \$262,400, discounted.

The technical corrections made in Vision 100 are expected to be cost neutral since the purpose of the legislation and proposed change in the regulation formalize practices (i.e. certifications) that have already occurred.

#### Regulatory Cost Savings

The two items in the proposed regulation change not mandated by Vision 100 offer similar or greater cost savings to airports. Public agencies currently may file an application to impose a PFC, impose and use PFC revenue, or, in the case of previously approved impose authority, an application to use PFC revenue. The revision in the use application process would reduce paperwork and simplify the use application process for projects with no changes. Similarly, the revised amendment process will greatly reduce the paperwork necessary to file amendment requests and simplify the process.

For the use application revision, the FAA has estimated that the process simplification and paperwork reduction will reduce the public agency's cost by approximately 50 percent. Estimating a cost of approximately \$10,000 for preparation of a use application under the current regulation, these changes will save \$5,000 per application filed. The FAA has determined that, on average, 10 applications seeking only authorization for the use of PFC revenues are filed in a calendar year. Accordingly, the total annual cost reduction for this provision is expected to be \$50,000. The total cost savings of this provision would be \$500,000 over a 10-year period or \$351,150, discounted.

The revised amendment procedures are also expected to reduce a public agency's cost to file an amendment to a previously approved PFC application. The FAA expects that the new procedure for amendments will reduce a public agency's cost by approximately one third. Estimating a cost of approximately \$5,000 to process an amendment under the current regulation, these changes will save \$1,667 per amendment request. The FAA has determined that, on average, 120 amendment requests are filed in a calendar year. Accordingly, the total annual cost reduction for this provision is expected to be \$200,000. The 10-year cost savings of this proposal would be \$2 million or \$1,404,600, discounted.

The total net cost savings for public agencies for all of the changes proposed in this rulemaking for part 158 has been calculated to be \$377,500 annually for the first three years, then \$277,500 for the remaining seven years. The 10-year cost savings of this proposal would be \$3,075,000 or \$2,211,300, discounted as shown in Table 1. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

Table 1 – Ten-Year Net Cost-savings to Public Agencies

Provision	Cost Or Cost-savings	Discounted Cost Or Cost-savings
Section 158.23 Limit Air Carrier Notification	\$875,000	\$614,500
Section 158.30 Non-Hub Airport Application	\$300,000	\$262,400
Section 158.25 Use Application	\$500,000	\$351,150
Section 158.37 Amendment of Approved PFC	\$2,000,000	\$1,404,600
<b>Total Cost-savings</b>	<b>\$3,675,000</b>	<b>\$2,632,650</b>
<b>Cost :</b> Section 158.24	<b>(\$600,000)</b>	<b>(\$421,400)</b>

Public Comment Solicitation		
<b>Net Cost-savings</b>	\$3,075,000	\$2,211,250

#### **B. Costs to Air Carriers**

Air carriers should incur only minimal costs in adjusting to the proposed changes to part 158. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

#### **C. Impact on Air Passengers**

The FAA estimates that there will be little or no impact on air passengers as a result of the proposed changes to part 158. Inasmuch as the proposals are estimated to be cost beneficial to public agencies and no new fees or charges are imposed directly on passengers, the new procedures are expected to be transparent to the traveling public. In fact, the cost savings achieved by the public agencies may result in indirect cost savings to the public. Such savings would likely be minimal and difficult to quantify. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

#### **D. Savings to the FAA**

The FAA would save \$47,500 annually by eliminating the publication of 95 notices in the Federal Register based on a cost of approximately \$500 incurred by the FAA for the publication of each notice. The 10-year savings would be \$475,000 or \$333,600, discounted.

#### IV. Summary of Costs

The proposed rule would amend part 158 to be consistent with the current statute governing the PFC program--in particular, it will simplify and streamline the PFC application and approval process. The FAA is also proposing additional changes to part 158 that simplify and streamline the PFC process in a manner that is similar to the changes mandated by Vision 100.

The FAA estimates that the net effect of the proposed changes would be a decrease in cost for public agencies and the FAA by \$3.6 million or \$2.5 million, discounted as shown in Table 2 and has a neutral effect on airline passengers. Air carriers would incur only minimal costs in adjusting to the proposed changes to part 158.

Table 2 Net 10-Year Cost-savings of Proposed Rule

Entity	Cost-savings	Discounted Cost-savings
Public Agencies	\$3,075,000	\$2,211,250
FAA	\$475,000	\$333,600
Total Cost-savings	\$3,550,000	\$2,544,850

For non-hub airports, the implementation of a pilot program for PFC authorization may encourage more public agencies in this classification to apply for a PFC. This may provide the benefit of greater airport funding for public agencies that would otherwise been discouraged from applying for a PFC under the existing process.

In summary, the FAA concludes that the proposed rule is a cost-effective means to accommodate the statutory requirement of streamlining the PFC application and approval process by recrafting various procedures. These procedures were studied by the FAA prior to reauthorization and determined to provide the greatest improvements to the process while limiting additional risk.

## **V. Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would not impose costs on small commercial service airports. Rather, costs associated with this proposed rule would be limited to only what is authorized by statute. Moreover, actual PFC collection authority is not affected by the proposal and all costs are fully recoverable through the PFC, if necessary, by small adjustments in the period of PFC collection. A small airport would incur an estimated cost of \$600 to notify the public of an application. However, the other provisions would enable a small airport to save \$2,500 in application cost procedures, reduce its carrier notification costs by \$875, reduce the cost of filing a use application by \$5,000 and reduce the cost of filing an amendment to an approved application by \$1,667.



Thus, a small airport would realize estimated net cost-savings of \$9,442 under the proposed rule.

The FAA conducted the required review of this proposed rule and determined that it would not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

#### **VI. International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards

In accordance with the above statute, the FAA has assessed the potential affect of this proposed rule and has determined that, to the extent it imposes any costs affecting international entities, it would impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

#### **VII. Unfunded Mandates Reform Act Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule

that may result in expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.